

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERT GERARD PLUMMER,

Defendant-Appellant.

UNPUBLISHED

September 4, 2001

No. 224719

Berrien Circuit Court

LC No. 95-003195-FC

Before: Fitzgerald, P.J., and Gage and C. H. Miel*, JJ.

MEMORANDUM.

Defendant was convicted by a jury of first-degree premeditated murder, MCL 750.316, assault with intent to commit murder, MCL 750.83, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2), arising from his shooting of two people, one fatally, in the midst of a bar brawl while he was intoxicated. The trial court sentenced defendant to serve prison terms of life without parole for the murder conviction and thirty to ninety years' for the assault conviction, both to be served consecutively to a mandatory two-year term for the felony-firearm conviction. After this Court vacated defendant's first-degree murder conviction and remanded for entry of a conviction of second-degree murder, *People v Plummer*, 229 Mich App 293 (1998), the trial court sentenced defendant to serve twenty to eighty years in prison for his murder conviction. He appeals as of right and we affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On appeal, defendant argues that Offense Variable 3 was misscored and that his sentence is disproportionate. We reject both arguments.

First, as noted by plaintiff, defendant's challenge to the scoring of OV 3 is not a cognizable appellate issue, except to the extent that he claims that the sentence is disproportionate. *People v Raby*, 456 Mich 487, 497 (1998); *People v Mitchell*, 454 Mich 145, 176-178 (1997); *People v Schmitz*, 231 Mich App 521, 535 (1998).

Second, defendant's sentence is proportionate to the offender and the seriousness of the offense. Defendant's twenty-year minimum sentence falls within the guidelines range and is, therefore, presumptively proportionate. *People v Rivera*, 216 Mich App 648, 652 (1996). Defendant argues that he has overcome the presumption of proportionality because (1) he only

* Circuit judge, sitting on the Court of Appeals by assignment.

had one prior conviction, (2) he graduated from high school and spent three years in the Army, (3) he worked as a cook supervisor in the federal prison system, (4) he continues to maintain his innocence of these crimes, (5) he has an exemplary prison record, (6) he has become an ordained minister while in prison, and (7) he has the support of his family and numerous others in the community. While these factors are impressive, we are not persuaded that the trial court abused its discretion in imposing a sentence within the guidelines. As the trial judge noted that this was a “difficult case” which had a “devastating [e]ffect” on the decedent’s family. The judge further noted that only two years before this incident defendant had been convicted of possession of a firearm, arising from an incident in which he was in a bar and pulled out a gun while intoxicated.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Hilda R. Gage
/s/ Charles H. Miel